



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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AO-97-11

Alan H. Shapiro, Esq.
Sandulli, Grace, Shapiro, Horwitz & Davidson, LLP
40 Broad Street, Suite 830
Boston, MA 02109

Re: Emergency Medical Services Political Action Committee

Dear Mr. Shapiro:

This letter is in response to your May 6, 1997 request for an advisory opinion, submitted on behalf of the Boston Police Patrolmen's Association, Inc. ("BPPA").

Question

If the BPPA processes members' dues/contributions for a new Emergency Medical Services ("EMS") PAC, separate from and not controlled by, the Boston Police Patrolmen's Association Political Action Committee ("the patrolmen's PAC"), would the EMS PAC be considered separate and not affiliated to the patrolmen's PAC?

Answer

Yes, if the EMS PAC reimburses the BPPA for its costs in providing space and administrative services to the PAC. Absent such reimbursement, the EMS PAC would be considered to be "maintained" by the BPPA and affiliated to the patrolmen's PAC for purposes of calculating the applicable contribution limits under M.G.L. c. 55, §6.

Facts

You have stated that the BPPA is a labor organization which currently represents three employee bargaining units: patrol officers in the Boston Police Department, police cadets employed by the Boston Police Department, and emergency medical services personnel employed by the Boston Health Commission. Dues money is deducted weekly by the City of Boston from those members who have filed signed authorizations. The City forwards the funds, in the form of three checks (one check for each bargaining unit), to the BPPA, which deposits the checks into its general account. Funds which have been earmarked by members to be used by the patrolmen's PAC are immediately transferred into that committee's separate account.

The BPPA is housed in a three-story building. The basement and first two floors are utilized by the BPPA for member meetings and general administrative purposes, most of which are devoted to the representation of police bargaining units, but also is used to house the activities of the patrolmen's PAC. The third floor is occupied by EMS bargaining unit personnel, who maintain offices with a separate phone number, fax number, and answering machine. While the leaders of the EMS bargaining unit handle the representation of their members, all costs and expenses are paid for out of the general BPPA account.

The EMS bargaining unit is interested in setting up its own political action committee. This new committee would be run and controlled by members of the EMS bargaining unit and contributions to the PAC would be earmarked for that purpose. Members' PAC contributions would be withheld from their pay, paid to the BPPA general fund by the City, and then immediately transferred by the BPPA to the EMS political action committee, just as the patrolmen's PAC currently is funded. If necessary, someone other than the treasurer of the patrolmen's PAC would serve as treasurer of the EMS committee. In any event, the treasurer of the patrolmen's PAC would have no control or authority over the EMS Committee in its operations or contributions.

Although the BPPA has influence over the actions of the patrolmen's PAC, the association would not have similar control over the EMS PAC. You expect, however, that on occasion the EMS PAC would contribute to the same candidates who are supported by the patrolmen's PAC.

The EMS PAC would operate out of the third floor of the BPPA building. The committee could either reimburse the BPPA for the space used and administrative services provided or, alternatively, report the value of such space and services as an in-kind contribution.

Discussion

The campaign finance law establishes limits on contributions which may be made by political action committees as well as other political committees, e.g., a PAC may contribute no more than \$500 during any calendar year to any candidate or candidate committee. See M.G.L. c. 55, §6. The law specifies that for the purposes of calculating this and other limitations "all campaign contributions made by political committees **established, financed, maintained or controlled** by any person, including any parent committee of a subsidiary committee or any person other than a natural person, shall be considered to have been made by a single political committee." *Id.*, emphasis added. If two committees are established, financed, maintained or controlled by the same person, committee, or organization, they are considered "affiliated."

The gist of your question appears to be whether the BPPA would be considered to have "established" the EMS PAC, or whether it would be "financing," "maintaining" or "controlling" the committee as those terms are used in statute. If the answer to this question is "yes," the contributions which could be made by the two PACs would be aggregated in determining compliance with contribution limitations, e.g., if the patrolmen's PAC contributes \$400 to a particular candidate in 1998, the EMS PAC could contribute no more than \$100 to the candidate in 1998.

A. Definition of terms

The regulations issued by this office pursuant to section 6 define how one determines whether a committee is "established," "financed," "maintained" or "controlled" by a person or an organization or committee. See 970 CMR 1.06(1)(b). Specifically, the regulations provide a list of factors which, when present where two or more committees contribute to the same candidate or committee, may result in the committees being considered affiliated:

Two or more political committees may be considered to be a single political committee for the purposes of the contribution limitations in M.G.L. c. 55, §6, if such committees make contributions to one or more of the same candidates or political committees and if at least one of the following indicia of a person establishing, financing, maintaining or controlling such committees exist:

1. Such person possesses one or more of the following with respect to each of the political committees:
 - a. Ownership of a controlling interest in voting rights, shares or securities of one or more of the political committees in question or of a person having control over such committee or committees, if any;
 - b. The authority, power, or ability to direct or control the activities of one or more of the political committees in question or of a person having control over such committee or committees, if any; or
The authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of one or more of the political committees in question or of a person having control over such committee or committees, if any.
2. Each of the political committees having the same, or substantially the same, persons as principal officers or members;
3. Each of the political committees reach decisions regarding expenditures made to one or more candidates or political committees in cooperation, consultation or concert with or at the request or suggestion of, each other or of a person having control over such committees, if any;

4. The transfer of funds between the political committees which represent a substantial portion of the funds of either the transferor or transferee political committee;
5. Contributions represent a substantial portion of the contributions received by each of said political committees; or
6. The use of shared administrative resources, including but not limited to office space, equipment or personnel, by the political committees.

In addition, the regulations specifically address membership organizations such as the BPPA: Regarding such organizations, "contributions shall be presumed to be made by one political committee if made by political committees established, financed, maintained, or controlled by . . . a membership organization, including but not limited to a trade or professional association or any state or local entities related to such organization or association." See 970 CMR 1.06(2)c). The presumption may, however, be rebutted "if the political committees in question present credible evidence that they have not made contributions in cooperation, consultation or concert with, or at the request or suggestion of each other or of any person who has established, financed, maintained or controlled such political committees. If the presumption . . . [is] rebutted by credible evidence, the political committees in question nevertheless remain subject to the provisions of 970 CMR 1.06(1)(b)." See 970 CMR 1.06(2)(d).

B. Application

The BPPA provides administrative support (in this instance, the BPPA building and the BPPA's administrative support), as an in-kind contribution to the patrolmen's PAC. If the BPPA also were to provide such contribution to the EMS PAC, the office would conclude that the EMS PAC is using "shared administrative resources" with the patrolmen's PAC. See 970 CMR 1.06(1)(b)6. Absent reimbursement, the PAC would be considered to be "maintained" by the BPPA. See OCPF advisory opinion AO-95-30, in which the office defined "maintain" (in the context of M.G.L. c. 55, s. 5B) as "to keep in an existing state."

Although the making of some in-kind contributions from the BPPA would not necessarily lead to the conclusion that the association was "maintaining" the PAC, more substantial contributions, such as providing all administrative support needed by the PAC, would lead to that conclusion. To avoid the conclusion that it would be "maintained" by the BPPA, the EMS PAC should reimburse the BPPA for its administrative support, e.g., the PAC should pay the BPPA for any staff time used and should calculate the rental value of that portion of office space used by the PAC and

reimburse the BPPA for such space.¹ In short, if the association maintains both PACs, the PACs would be presumed to be one committee for purposes of determining compliance with the limits established in section 6.

I assume that the other factors listed in 970 CMR 1.06(1)(b)(1) through (5) are not applicable and that the two committees would not be established, financed or controlled by any person or organization. You have stated that decisions regarding which candidates will receive the PACs' contributions will not be made by any controlling person or organization, and that each committee can have a separate treasurer. If the patrolmen's PAC and the EMS PAC shared the same treasurer or shared other principal officers, they would be considered affiliated. See 970 CMR 1.06(1)(b)(2). In addition, if decisions regarding expenditures to candidates are made in cooperation, consultation or in concert with each other, or if expenditures are made at the request or suggestion of each other or any person or organization, then the committees would be considered affiliated. See 970 CMR 1.06(1)(b)(3).

This opinion is provided on the basis of representations in your letter and in conversations with OCPF staff, and is solely within the context of the campaign finance law.

I encourage you to contact us in the future if you have further questions.

Sincerely,



Michael J. Sullivan
Director

MJS/cp

¹ You should also note that public employees may not solicit or receive funds on behalf of the PAC. Therefore, for example, the treasurer of the PAC may not be an emergency medical technician employed by the City of Boston. See M.G.L. c. 55, s. 13 and interpretive bulletin IB-92-01.